

EXHIBIT JJ

LYNCH ICHIDA THOMPSON KIM & HIROTA

WESLEY W. ICHIDA 1079-0
TIMOTHY J. HOGAN 5312-0
1132 Bishop Street, Suite 1405
Honolulu, Hawaii 96813
Tel. No. (808) 528-0100
Fax No. (808) 528-4997
E-mail: tjh@loio.com

Attorney for Plaintiff
WAYNE BERRY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

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| WAYNE BERRY, a Hawaii citizen; |) | Civ. No. CV03 00385 SOM-LEK |
| |) | (Copyright) |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| HAWAIIAN EXPRESS SERVICE, INC., a California corporation; et al. |) | PLAINTIFF WAYNE BERRY'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AWARD OF ATTORNEY'S FEES AND FULL COSTS |
| Defendants. |) | |
| |) | |
| |) | |

**PLAINTIFF WAYNE BERRY'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR AWARD OF
ATTORNEYS' FEES AND FULL COSTS**

Hogan Aff. Exhibit "4" evidences that Fleming's Hawaii management raised issues that went unheaded. The Debtor chose to go forward contrary to the direction of the corporate officer responsible for such decision making who concluded that an accommodation with Mr. Berry was necessary under the circumstances. *See e-mail* from Ron Griffin, CIO, Fleming Companies, Inc., Trial Exhibit "78" Hogan Aff., Exhibit "5". Had Fleming Hawaii done what the CIO, Mr. Griffin, proposed none of the costs or fees would have been incurred in this case. Even after both the Delaware and the instant litigation commenced, Mr. Berry agreed to waive any claim of damages if the Debtor would agree to cease the infringing use and return Mr. Berry's works. Hogan Aff. ¶ and Exhibit "6."]

On July 23, 2003, Mr. Berry filed this action, *Wayne Berry v. Hawaiian Express Services, Inc.*, against Hawaiian Express Service, Inc. ("HEX"), the freight forwarder who had been using Mr. Berry's system illegally in an unlicensed form for a period of over three years. That freight forwarder had been dismissed in the earlier action without prejudice.

In an obvious effort to try to "first file" Mr. Berry and pin him down in Delaware to prevent him from protecting of his copyright in his home forum through the increased costs of litigation, Fleming initiated an action against Mr. Berry, *Fleming Companies, Inc. v. Wayne Berry*, Adv. Proc. 03-10945-MFW

/s/ Timothy J. Hogan

TIMOTHY J. HOGAN

Attorney for Plaintiff

WAYNE BERRY